

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

MICHAEL HENRY ANDERSON,

Plaintiff,

v.

DAN DELTEN, TOM SIMKINS, DAN JOHNSON, and BEN BOULEY,

Defendants.

CV-17-63-H-BMM-JTJ
(CV-17-70-H-BMM-JTJ)
(CV-18-04-H-BMM-JTJ)

**ORDER ADOPTING MAGISTRATE
JUDGE'S FINDINGS AND
RECOMMENDATIONS**

Plaintiff Michael Anderson, a prisoner proceeding without counsel, filed actions which have been consolidated. He first alleged that Defendants Dan Delten, Tom Simkins, and Dan Johnson were deliberately indifferent to his safety on February 22, 2017, when they allegedly disclosed his sex offender status and sexual orientation to other inmates resulting in other inmates assaulting and harassing Mr. Anderson. (Doc. 47 at 2). In a consolidated action Mr. Anderson alleged that his unit manager, Ben Bouley, also disclosed Mr. Anderson's sex offender status, sexual orientation, and gender identity to other inmates and disciplined him in retaliation for Mr. Anderson's refusal to have sex with Bouley.

Id.

Magistrate Judge Johnston determined that Mr. Anderson failed to exhaust his administrative remedies regarding his failure to protect claims. *Id.* at 3. Judge Johnston held that regardless of when Mr. Anderson filed the informal resolution

or whether Bouley correctly or incorrectly denied it on timeliness grounds, Mr. Anderson failed to avail himself of an available means of contesting that determination. *Id.* at 16.

Judge Johnston determined that there is no genuine dispute of material fact that Mr. Anderson failed to exhaust his administrative remedies before bringing his failure to protect claims. *Id.* Judge Johnston further determined that having found that Mr. Anderson did not fully exhaust his grievance as to Officers Smikins and Johnson, there was no need to evaluate whether the February 22, 2017 grievance was sufficient to exhaust Mr. Anderson's claims against Bouley. *Id.*

Judge Johnston entered Findings and Recommendations on February 14, 2019, and determined that Defendants motion for summary judgment be granted. *Id.* at 19.

No party filed objections to Judge Johnston's Findings and Recommendations. The Court has reviewed Judge Johnston's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Johnston's Findings and Recommendations and adopts them in full.

ORDER

Accordingly, **IT IS ORDERED** that Magistrate Judge Johnston's Findings and Recommendations (Doc. 47) are **ADOPTED IN FULL**.

IT IS ORDERED that Defendants' Motion for Summary Judgement (Doc. 33) is **GRANTED** and Mr. Anderson's failure to protect claims and Defendants Smikins, Johnson, and Delton are be DISMISSED.

DATED this 14th day of March, 2019.

A handwritten signature in blue ink that reads "Brian Morris". The signature is fluid and cursive, with a long, sweeping line for the first name and a more compact, rounded line for the last name.

Brian Morris
United States District Court Judge